

AIA[®] Document B141/CMa[™] – 1992

Standard Form of Agreement Between Owner and Architect *where the Construction Manager is NOT a Constructor*

AGREEMENT made as of the day of in the year of
(In words, indicate day, month and year.)

BETWEEN the Owner
(Name and address):

and the Architect
(Name and address):

for the following Project
(Include detailed description of Project, location, address and scope):

The Construction Manager is
(Name and address):

The Owner and Architect agree as set forth below.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with the 1992 editions of AIA Documents B801/CMa, A101/CMa and A201/CMa

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ARTICLE 1 INITIAL INFORMATION

§1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, the Construction Manager, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Construction Cost, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

.2 Substantial Completion date:

§1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation as provided in this Agreement.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 ARCHITECT'S SERVICES

§ 1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

§ 1.1.2 The Architect's services shall be provided in conjunction with the services of a Construction Manager as described in the edition of AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager, current as of the date of this Agreement.

§ 1.1.3 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Architect shall submit for the Owner's approval and the Construction Manager's information a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's and Construction Manager's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.1.4 The services covered by this Agreement are subject to the time limitations contained in Section 11.5.1.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 DEFINITION ARCHITECT'S SERVICES

The Architect's Services consist of the services the Architect is required to perform under this Agreement, and, unless inconsistent with the instructions, guidance, and direction of the Owner, all professional services usually and customarily performed in conjunction with, and in furtherance of, such services.

§ 2.1.1 The Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

Services shall be provided in conjunction with the services of a Construction Manager as described in the edition of AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager. Where reference is made in this Agreement to a provision of AIA Document B801/CMA, or any other AIA document or provision, the reference refers to that document or provision as amended by the Owner and, if applicable, any other party to such document, and as amended and supplemented by other provisions of the Contract Documents.

§ 2.1.2 The Architect shall be responsible for the performance of the Architect's Services as an independent contractor and in a good and workmanlike manner (i) consistent this Agreement; (ii) consistent with the instructions, guidance and direction of the Owner; (iii) consistent with the highest prevailing applicable professional or industry standards; (iv) consistent with sound architectural practices; and (v) as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project, the instructions of the Owner and this Agreement (the standards of this Section § 2.1.2 shall be referred to herein as the "Architect's Standard of Care").

§ 2.1.2.1 The Architect shall exercise the Architect's Standard of Care in performing all aspects of the Architect's Services. All references in this Agreement or in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Architect or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Architect ("constructive knowledge"). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Architect would have obtained upon the exercise of the Architect's Standard of Care.

§ 2.1.3 The Architect shall be responsible for the performance of the Architect's Services in compliance with all applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction over the Project and with the Conditions as defined in Subsection 2.1.3.1.

§ 2.1.3.1 The "Conditions" are all statutory and regulatory requirements and all guidelines and standards imposed on the Project by the Agencies, as defined hereinafter.

§ 2.1.3.2 The "Agencies" are the Department of Education of the State of Connecticut (the "Department") and all other governmental authorities having regulatory or administrative jurisdiction over the Project and all representatives or designees of the Department or such other governmental authorities. The term "Agencies" shall also include any individuals or entities designated by the Department or such other governmental authorities or by the Owner to monitor or oversee compliance of the Project's energy and environmental design with the requirements of the Department or such other governmental authorities.

§ 2.1.3.3 The term "Agencies" shall also include any individual or entity not described in Section 2.1.3.2 from whom the Owner intends to request certification of the Project's energy and environmental design, to the extent the Architect is required, under this Agreement, to provide services relating to such certification.

§ 2.1.3.4 The Architect understands that performance of the Architect's Services will require communication with the Agencies and with individuals designated by the Agencies, and the Architect will, at no additional cost to the Owner, so communicate and take all steps necessary to ensure compliance with the Conditions.

§ 2.1.4 Within _____ days of the date of this Agreement, the Architect shall submit for the Owner's approval and the Construction Manager's information a schedule for the performance of the Architect's Services which may be adjusted as the Project proceeds as provided hereinafter, and shall include allowances for periods of time required for the Owner's and Construction Manager's review and for approval of submissions by the Agencies. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. Time is of the essence in this Agreement, and the Architect will be bound by the schedule and will not deviate from or adjust the schedule without the Owner's express written consent, which consent the Owner shall not unreasonably withhold to the extent such deviations or adjustments are necessary due to factors outside the Architect's control. The Architect shall update the schedule to incorporate any deviations or adjustments approved by the Owner and shall provide the Owner and Construction Manager with such updated schedule.

§ 2.1.5 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of the Agencies.

§ 2.1.6 The services covered by this Agreement are subject to the time limitations contained in Section 3.3.4.

§ 2.1.7 The Architect shall be responsible for the negligent acts or omissions of the Architect, and the Architect's consultants and subcontractors and for the failure of the Architect, and the Architect's consultants and subcontractors to comply with the requirements of this Agreement.

§ 2.1.8 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.1.9 The Architect shall maintain the types and amounts of insurance specified in this Section § 2.1.9. The Architect shall maintain such insurance for the duration of this Agreement, and for any additional period specified in this Agreement. The Architect shall require its consultants and subcontractors to maintain the same types of insurance the Architect is required to maintain under this Agreement, in amounts approved by the Owner. The Owner shall be named an additional insured on the Commercial General Liability and Automobile Liability insurance of the Architect and its subcontractors and consultants. Before commencing the Architect's Services, the Architect shall file with the Owner certificates of insurance for the required insurance and shall update such certificates throughout the duration of this Agreement and during any additional period specified in this Agreement. Certificates of professional liability insurance shall bear the endorsement 'Not to be canceled without thirty days' prior written notice to Owner. [Subject to review by Owner's Risk Manager.] :

(Identify types and amounts of insurance coverage required, and other insurance requirements applicable to the Agreement, if any.)

.1 Commercial General Liability

.2 Automobile Liability

.3 Workers' Compensation

.4 Professional Liability

.1 Minimum coverage for each occurrence

.2 Minimum annual coverage

.3 Maximum deductible

.4 Extended reporting period for six (6) years following the termination of this Agreement

ARTICLE 2.2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.2 SCHEMATIC DESIGN PHASE

§ 2.2.1 The Architect shall review the program, schedule and construction budget furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner. Architect's Basic Services consist of those services described in this Article 2 and any other services identified as part of Basic Services, and, unless inconsistent with the instructions, guidance, and direction of the Owner, all professional services usually and customarily performed in conjunction with, and in furtherance of, those services including, but not limited to, structural, mechanical and electrical engineering services.

§ 2.2.2 The Architect shall review with the Owner and Construction Manager proposed site use and improvements; selection of materials, building systems and equipment; and methods of Project delivery; manage the Architect's Services, consult with the Owner, the Agencies and the Construction Manager, and the Agencies, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 2.2.3 The Architect shall review with the Owner and Construction Manager alternative approaches to design and construction of the Project, not be responsible for an Owner's directive or substitution made without notice to the Architect or to which the Architect has timely objected in writing, which objection shall include an explanation of such objection.

~~§ 2.2.4 Based on the mutually agreed upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Architect shall, at appropriate times, consult with those of the Agencies whose approval of the Construction Documents is necessary for the successful funding and completion of the Project and with the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such of the Agencies and by such entities providing utility services.~~

~~§ 2.2.5 At intervals appropriate to the progress of the Schematic Design Phase and mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide schematic design studies for the Owner's review and the Construction Manager's information.~~

~~§ 2.2.6 In the further development of the drawings and specifications during this and subsequent phases of design, the Architect shall be entitled to assume the accuracy of the estimates of Construction Cost which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.~~

~~§ 2.2.7 Upon completion of the Schematic Design Phase, the Architect shall provide drawings, outline specifications and other documents for the Owner's approval and the Construction Manager's information.~~

§ 2.3 DESIGN DEVELOPMENT PHASE PRE-APPROVAL SERVICES

~~§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon data and estimates prepared by the Construction Manager and shall consist of drawings and other documents that establish and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Architect shall assist the Owner to develop its Educational Specifications, preliminary cost estimates, and other submittals the Owner must produce to become eligible for funding from the State of Connecticut. Such assistance shall include~~

~~[INFORMATION TO BE SUPPLIED BY OWNER, AS NECESSARY]~~

~~§ 2.3.2 At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide drawings and other documents which depict the current status of design development for the Owner's review and the Construction Manager's information. The Architect shall assist the Owner to secure funding of the local share of the Project costs. Such assistance shall include developing preliminary cost estimates,~~

~~[INFORMATION TO BE SUPPLIED BY OWNER, AS NECESSARY]~~

~~§ 2.3.3 Upon completion of the Design Development Phase, the Architect shall provide drawings, outline specifications and other documents for the Owner's approval and the Construction Manager's information. The Architect shall assist the Owner to develop its application for funding from the Department. Such assistance shall include~~

~~[INFORMATION TO BE SUPPLIED BY OWNER, AS NECESSARY]~~

§ 2.4 CONSTRUCTION DOCUMENTS PHASE SCHEMATIC DESIGN PHASE

~~§ 2.4.1 Based on the approved Design Development Documents and any further adjustments authorized by the Owner in the scope or quality of the Project or in the construction budget, the Architect, utilizing data and estimates prepared by the Construction Manager, shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Schematic Design Phase shall commence upon written notice by the Owner to the Architect.~~

~~§ 2.4.2 At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide Drawings and Specifications for the Owner's and the Construction Manager's review. The Architect shall review the program, schedule, construction budget, proposed procurement or delivery method, and other Initial Information furnished by the Owner; the Project site; information furnished for, and produced during, the Pre-Approval Services, the local approval process, and the approval for funding from the Department; and all applicable laws, codes and regulations and the Conditions. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for~~

the Project. The Architect shall, as required, consult with the Agencies on an ongoing basis during the Schematic Design Phase.

§ 2.4.3 Upon completion of the Construction Documents Phase, the Architect shall provide Construction Documents for the Owner's approval and the Construction Manager's information. The Architect shall review with the Owner and Construction Manager proposed site use and improvements; selection of materials, building systems and equipment; and methods of Project delivery.

§ 2.4.4 The Architect shall assist the Owner and Construction Manager in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and the forms of Agreement between the Owner and the Contractors. The Architect shall assist the Construction Manager in issuing bidding documents to bidders and conducting prebid conferences with prospective bidders. The Architect, with the assistance of the Construction Manager, shall respond to questions from bidders, and shall issue addenda. review with the Owner and Construction Manager alternative approaches to design and construction of the Project including the feasibility of incorporating environmentally responsible design approaches not otherwise required under the Conditions.

§ 2.4.5 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project shall, together with the Construction Manager, reach an understanding with the Owner regarding the requirements of the Project (the "Project's) Requirements"). The Architect shall submit a written copy of the Project Requirements to the Owner for the Owner's written approval and to the Construction Manager for incorporation into the preliminary evaluation the Construction Manager is required to prepare under its agreement with the Owner.

§ 2.4.6 Based on the mutually agreed-upon program, schedule and construction budget requirements, and the preliminary evaluation prepared by the Construction Manager, the Architect shall prepare, for approval by the Owner, a preliminary design illustrating the scale and relationship of the Project components.

§ 2.4.7 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. The Architect shall consult with the Agencies to determine the requirements to be incorporated in the Schematic Design Documents. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 2.4.8 The Architect shall incorporate in the Schematic Design Documents and all subsequent Design Documents the designs required to comply with those of the Conditions relating to energy and environmental design criteria and standards, and all energy and environmental design criteria and standards otherwise requested by the Owner under this Agreement. The Architect shall further consider other environmentally responsible design alternatives not included in the Conditions and not otherwise requested by the Owner, such as, to the extent not included in the Conditions and not otherwise requested by the Owner, material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 3.

§ 2.4.9 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Construction Cost.

§ 2.4.10 At intervals appropriate to the progress of the Schematic Design Phase and mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide schematic design studies for the Owner's review and the Construction Manager's information.

§ 2.4.11 In the further development of the drawings and specifications during this and subsequent phases of design, the Architect shall be entitled to assume the accuracy of the estimates of Construction Cost which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 2.4.12 Upon completion of the Schematic Design Phase, the Architect shall provide drawings, outline specifications and other documents for the Owner's approval and the Construction Manager's information. The Architect shall revise the Schematic Design Documents as requested by the Owner.

§ 2.4.13 The Architect shall, upon the Owner's request, attend a reasonable number of conferences with the Agencies.

§ 2.5 BIDDING OR NEGOTIATION PHASEDESIGN DEVELOPMENT PHASE

§ 2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the Construction Manager's latest estimate of Construction Cost, shall assist the Construction Manager in obtaining bids or negotiated proposals and assist in preparing contracts for construction. Design Development Phase shall commence upon written notice by the Owner to the Architect.

§ 2.5.2 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon, and consistent with, data and estimates prepared by the Construction Manager and shall note any inconsistency with such data and estimates. The Design Development Documents shall consist of drawings and other documents that establish and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 2.5.3 At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide drawings and other documents which depict the current status of design development for the Owner's review and the Construction Manager's information.

§ 2.5.4 Upon completion of the Design Development Phase, the Architect shall provide drawings, outline specifications and other documents for the Owner's approval and the Construction Manager's information. The Architect shall revise the Design Development Documents as requested by the Owner.

§ 2.6 CONSTRUCTION PHASE-

ADMINISTRATION OF THE CONSTRUCTION CONTRACTCONSTRUCTION DOCUMENTS PHASE

§ 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for construction and terminates at the earlier of the issuance to the Owner of the final Project Certificate for Payment or 60 days after the date of Substantial Completion of the Work. Construction Documents Phase shall commence upon the Owner's written notice to the Architect.

§ 2.6.2 The Architect shall provide administration of the Contract for construction in cooperation with the Construction Manager as set forth below and in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager Adviser Edition, current as of the date of this Agreement. Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Construction Cost, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's information. The Architect shall revise the Construction Documents as requested by the Owner. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work, including all information required to obtain all permits, certifications and approvals necessary to complete the Project. The Owner and Architect acknowledge that in order to construct the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with this Agreement. The Architect shall incorporate into the Construction Documents the design requirements of the Agencies.

§ 2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractors and the Construction Manager, which consent shall not be unreasonably withheld. At the request of the Construction Manager, the Architect shall provide the Construction Manager information that is reasonably necessary for the

Construction Manager's monitoring of the Construction Cost as required under the Construction Manager's agreement with the Owner.

§ 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractors is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contracts for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument. At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide Drawings and Specifications for the Owner's and the Construction Manager's review.

§ 2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. (More extensive site representation may be agreed to as an Additional Service, as described in Section 3.2.) Any design errors or omissions in the Construction Documents furnished by the Architect will be promptly corrected by the Architect at no cost to the Owner, and the Architect will indemnify the Owner for all third party claims, suits and damages, if any, resulting from the Architect's negligent acts, errors or omissions. The Owner's approval, acceptance, use of, or payment for, all or any part of the Architect's Services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder. If, due to the Architect's negligence, omission or failure to perform in accordance with the terms of this Agreement, a required item or component of the Project is omitted from the Construction Documents or if, due to such negligence, omission or failure, the Construction Documents must be modified through a Change Order, the Architect shall be responsible for paying the cost required to add or modify such item or component to the Project, excluding the reasonable cost that would have been incurred by the Owner at the time of the original bid for such Project item or component, to the extent that such item or component would have been required and included in the original Construction Documents. In no event shall the Owner pay more than once for an item or component of the Project.

§ 2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractors' responsibility under the Contracts for Construction. The Architect shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not be responsible for the performance by the Construction Manager of the services required by the Construction Manager's agreement with the Owner. The Architect shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or of any other persons performing services or portions of the Work. The Architect, together with the Construction Manager, shall assist the Owner in obtaining the approval of the Department to begin the Bidding Phase. Such assistance shall include attending a reasonable number of meetings with the Department, producing any documents and providing any services required of the Architect and requested of the Owner by the Department, and, upon the Owner's written approval, making any adjustments to the Construction Documents requested by the Department.

§ 2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress, compile a project manual that includes the Conditions of the Contract for Construction and Specifications, bidding requirements and sample forms. The Architect shall assist the Owner and Construction Manager in the development and preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and the forms of Agreement between the Owner and the Contractors. The Architect shall assist the Construction Manager in issuing bidding documents to bidders and conducting prebid conferences with prospective bidders. The Architect, with the assistance of the Construction Manager, shall respond to questions from bidders, and shall issue addenda.

§ 2.7 BIDDING PHASE

§ 2.7.1 The Bidding Phase shall commence upon written notice from the Owner to the Architect.

§ 2.7.2 The Architect shall, with the assistance of the Construction Manager, consider requests for substitutions, if the Bidding Documents permit substitutions, and shall, upon the Owner's written approval, prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 2.7.3 The Architect, following the Owner's approval of the Construction Documents and of the Construction Manager's latest estimate of Construction Cost, shall assist the Construction Manager in obtaining bids and assist in preparing contracts for construction and in preparing the reports to the Owner related to the bidding process required of the Construction Manager under the agreement between the Owner and the Construction Manager.

§ 2.8 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.8.1 The Architect's responsibility to provide Construction Phase Services commences upon written notice from the Owner to the Architect and terminates, except to the extent otherwise provided in this Agreement, on the date the Architect issues the final Certificate for Payment.

§ 2.8.2 The Architect shall provide administration of the Contract for construction in cooperation with the Construction Manager as set forth below and in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, which modifications thereto by the Owner, Contractor or Construction Manager shall be subject to the Architect's reasonable approval (which approval shall not be unreasonably withheld, conditioned or delayed) to the extent such modifications affect the Architect's rights and responsibilities and are inconsistent with this Agreement. In the event of a conflict between the provisions of the A201 CMA and this Agreement regarding the rights and responsibilities of the Architect, the provisions of this Agreement shall govern; provided, however, that if such modifications or supplements as are approved by the Architect are inconsistent with the provisions of this Agreement, the Owner may chose which document governs the Architect and Owner's responsibilities to one another.

§ 2.8.3 Except as provided in Section 2.8.2, duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with, to the extent such changes affect the rights and responsibilities of Contractors or the Construction Manager, consent of such Contractors and the Construction Manager, which consent shall not be unreasonably withheld.

§ 2.8.4 The Architect shall be a representative of, and shall advise and consult with, the Owner during construction, (i) until the final payment is due, (ii) from time to time during the one year period described in Section 12.2 of the A201 CMA, (iii) while certification of the Project from any Agency is pending, and (iv) while any audit by the Department is ongoing. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and the Contract Documents.

§ 2.8.5 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 2.8.6 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise within seven days. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific element of the Contract Documents in need of clarification and the nature of the clarification requested. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 2.8.7 The Architect will visit the site at intervals appropriate to the stage of construction, including regularly scheduled site meetings and visits, to become to become familiar with the progress and quality of the portion of the Work completed to guard the Owner against defects and deficiencies in the Work and to determine if the Work observed is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.

§ 2.8.8 On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and inform the Owner in writing of (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 2.8.9 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractors' responsibility under the Contracts for Construction; provided, however, that nothing herein shall absolve the Architect of responsibility for means, methods, techniques, sequences or procedures specified in the Contract Documents or otherwise specified by the Architect. The Architect shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the Contract Documents provided that the Architect did not know of such failure. The Architect shall not be responsible for the performance by the Construction Manager of the services required by the Construction Manager's agreement with the Owner provided that the Architect did not know of such failure. The Architect shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or of any other persons performing services or portions of the Work and shall not be responsible for such acts or omissions that are negligent provided that the Architect did not know of such negligent acts or omissions.

§ 2.9 EVALUATIONS OF THE WORK

§ 2.9.1 The Architect shall at all reasonable times have access to the Work wherever it is in preparation or progress.

§ 2.9.2 Communications by and with the Architect's consultants shall be through the Architect.

§ 2.9.3 Based on the Architect's observations and evaluations of each Contractor's Application for Payment and the certifications of the Construction Manager, the Architect shall review the amounts claimed to be due the Contractor and shall certify and issue a Project Certificate for Payment in such amounts as the Architect determines to be due, which Project Certificate for Payment shall be a recommendation only, subject to the Owner's approval for payment. The Architect shall include in its Certificate of Payment the certification received from the Construction Manager and shall maintain a record of the Applications and Certificates for Payment.

§ 2.9.3.1 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Section 2.6.5, on the certifications of the Construction Manager and on the data comprising the Contractors' Applications for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect in writing at the time of certification.

§ 2.9.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.9.4 The Architect shall have authority, after notification to the Construction Manager, to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed but shall only take such action after notifying the Construction Manager. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Contractors, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

§ 2.9.5 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal

schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 2.9.6 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of assuring conformity with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety of those construction means, methods, techniques, sequences or procedures that are not specified in the Contract Documents or otherwise specified by the Architect. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.9.7 The Architect shall review and sign or take other appropriate action on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 2.9.8 The Architect may authorize minor changes in Work that are consistent with the intent of the Contract Documents and that do not involve an adjustment in a Contract Sum or an extension of a Contract Time. Such changes shall be effected by written order issued through the Construction Manager.

§ 2.9.9 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor and Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.9.9.1 The inspections of the Architect and Construction Manager shall be conducted to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected and to prepare for the Owner a written list of observable items, materials, or systems that are defective or that require additional Work or replacement by the Contractor.

§ 2.9.10 When the Work is found to be substantially complete, the Architect shall inform the Owner in writing of the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 2.9.11 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 2.9.12 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing and within any time limits agreed upon or otherwise within seven days.

§ 2.9.12.1 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractors, shall not show partiality to either, and shall not be liable for those results of interpretations or decisions so rendered in good faith and that were necessitated by a reason other than an act or omission of the Architect.

§ 2.9.13 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201 CMA, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 2.9.14 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 2.9.15 Upon request of the Owner, the Architect will cooperate and assist the Owner and the Department during any audit of the Project as conducted by the Owner or the Department at any time after Substantial Completion.

§ 2.9.16 At the conclusion of the Construction Phase and based upon information furnished by the Contractor, the Architect shall prepare and furnish to the Owner a complete record set of drawings and specifications depicting the Project as modified during construction, in CADD format acceptable to the Owner. In addition, the Architect shall deliver to the Owner a complete set of Construction Documents in CADD format acceptable to the Owner.

§ 2.6.8 Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.9 Based on the Architect's observations and evaluations of each Contractor's Application for Payment, the Architect shall review and certify the amounts due the respective Contractors.

§ 2.6.9.1 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Section 2.6.5, on the recommendations of the Construction Manager and on the data comprising the Contractors' Applications for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

§ 2.6.9.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.10 The Architect shall have authority, after notification to the Construction Manager, to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Contractors, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

§ 2.6.11 The Architect shall review and approve or take other appropriate action upon Contractors' submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Contractors' Work or in construction by the Owner's own forces, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of

equipment or systems designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

§ 2.6.12 The Architect shall review and sign or take other appropriate action on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 2.6.13 The Architect may authorize minor changes in Work not involving an adjustment in a Contract Sum or an extension of a Contract Time which are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Construction Manager.

§ 2.6.14 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect shall forward to the Owner warranties and similar submittals required by the Contract Documents which have been received from the Construction Manager. The Architect shall issue a final Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

§ 2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.6.18 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractors relating to the execution or progress of the Work as provided in the Contract Documents.

§ 2.6.19 The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractors, except for those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 GENERAL The services described in this Article 3 are, to the extent not included in Basic Services, Additional Services that may be required for the Project. Notwithstanding anything to the contrary, any services made necessary by the act or omission of the Architect, its consultants or subcontractors shall be provided by the Architect as Basic Services, at no additional cost to the Owner. The Architect shall provide Additional Services only if specifically designated in the table below as the Architect's responsibility or if otherwise required under this Article 3, and the Owner shall compensate the Architect as provided in Section 11.2. Notwithstanding anything to the contrary, (i) the Architect shall provide any service designated below without the compensation provided for in Section 11.2 and at no other additional cost to the Owner, to the extent such designated service is included in the Basic Services and (ii) any services made necessary by the act or omission of the Architect, its consultants or subcontractors shall be provided by the Architect as Basic Services, at no additional cost to the Owner. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 3.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services (to the extent not included in the Basic Services)	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 3.1.1 Programming		
§ 3.1.2 Multiple preliminary designs		
§ 3.1.3 Measured drawings		
§ 3.1.4 Existing facilities surveys		
§ 3.1.5 Site Evaluation and Planning (B203™–2007)		
§ 3.1.6 Building information modeling		
§ 3.1.7 Civil engineering		
§ 3.1.8 Landscape design		
§ 3.1.9 Architectural Interior Design (B252™–2007)		
§ 3.1.10 Value Analysis (B204™–2007)		
§ 3.1.11 Detailed cost estimating		
§ 3.1.12 On-site project representation		
§ 3.1.13 Conformed construction documents		
§ 3.1.14 As-designed record drawings		
§ 3.1.15 As-constructed record drawings		
§ 3.1.16 Post occupancy evaluation		
§ 3.1.17 Facility Support Services (B210™–2007)		
§ 3.1.18 Tenant-related services		
§ 3.1.19 Coordination of Owner's consultants		
§ 3.1.20 Telecommunications/data design		
§ 3.1.21 Security Evaluation and Planning (B206™–2007)		
§ 3.1.22 Commissioning (B211™–2007)		
§ 3.1.23 Extensive environmentally responsible design		
§ 3.1.24 LEED® Certification (B214™–2007)		
§ 3.1.25 Fast-track design services		
§ 3.1.26 Historic Preservation (B205™–2007)		
§ 3.1.27 Furniture, Finishings, and Equipment Design (B253™–2007)		

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such

services. If the Owner deems that such services described under Section 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

§ 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

Insert a description of each Additional Service designated in Section 3.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

~~§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.~~

~~§ 3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.~~

~~§ 3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.~~

§ 3.3 CONTINGENT ADDITIONAL SERVICES

Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 3.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. The Architect shall perform all services requested by the Owner. Services requested by the Owner or recognized to be necessary after execution of this Agreement are presumed to be included within Basic Services unless clearly shown to not be so included. If the Architect believes a service requested by the Owner or recognized to be necessary after execution of this Agreement is an Additional Service, prior to such performance, the Owner and the Architect, solely after notice from the Architect, given within five (5) days of the Owner's request, shall meet to determine if such services are within the Basic Services or Additional Services. If the Architect fails to submit such notice, the Architect shall be deemed to have waived any right to additional compensation for such services and the same shall be deemed part of the Basic Services.

~~§ 3.3.1 Making revisions in Drawings, Specifications, or other documents when such revisions are:~~
Upon recognizing the need to perform the following services, to the extent such services are not included in the Basic Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services to the extent not included in the Basic Services, until the Architect receives the Owner's written authorization:

- ~~.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;~~Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's or Construction Manager's schedule or budget Construction Cost, or procurement or delivery method;
- ~~.2 requested by the Owner because the Construction Manager's estimate of Construction Cost exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;~~Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification, except to the extent required by the Agencies or as otherwise required as part of the Architect's Basic Services;

- ~~.3 required~~ Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or official interpretations;
- ~~.4~~ Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- ~~.5~~ Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- ~~.6~~ Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- ~~.7~~ Preparation for, and attendance at, a public presentation, meeting or hearing not reasonably foreseeable on the date of execution of this Agreement;
- ~~.4~~ due to changes required as a result of the Owner's failure to render decisions in a timely manner.
Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ~~.9~~ Evaluation of the qualifications of bidders or persons providing proposals;
- ~~.10~~ Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- ~~.11~~ Assistance to the Initial Decision Maker, if other than the Architect.

§ 3.3.2 ~~Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity, the Owner's or Construction Manager's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.3.~~ To avoid delay in the Construction Phase, the Architect shall provide the following services and, to the extent not included in the Basic Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- ~~.1~~ Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- ~~.2~~ Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- ~~.3~~ Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- ~~.4~~ Evaluating an extensive number of Claims as the Initial Decision Maker;
- ~~.5~~ Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- ~~.6~~ To the extent the Architect's Basic Services are affected, providing Construction Phase Services 90 days after the date of Substantial Completion of the Work.

§ 3.3.3 ~~Preparing Drawings, Specifications, and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.~~ The

Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner. Nothing herein shall absolve the Architect of its responsibility under this Agreement to carry out the services listed below whenever appropriate and as necessary:

- .1 () reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 () visits to the site by the Architect over the duration of the Project during construction
- .3 () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 () inspections for any portion of the Work to determine final completion

§ 3.3.4 Providing services in connection with evaluating substitutions proposed by Contractors and making subsequent revisions to Drawings, Specifications and other documentation resulting there from. If compensation for the Basic Services is not based on a percentage of the Construction Cost and such Basic Services have not been completed, for reasons unrelated to the Architect's fault or inefficiency, within () months of the date of this Agreement, extension of the Architect's Basic Services beyond that time shall be compensated as Additional Services.

~~§ 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.~~

~~§ 3.3.6 Providing services made necessary by the termination or default of the Construction Manager or a Contractor, by major defects or deficiencies in the Work of a Contractor, or by failure of performance of either the Owner or a Contractor under a Contract for Construction.~~

~~§ 3.3.7 Providing services in evaluating an extensive number of claims submitted by a Contractor or others in connection with the Work.~~

~~§ 3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.~~

~~§ 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.~~

§ 3.4 OPTIONAL ADDITIONAL SERVICES

~~§ 3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.~~

~~§ 3.4.2 Providing financial feasibility or other special studies.~~

~~§ 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.~~

~~§ 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.~~

~~§ 3.4.5 Providing services relative to future facilities, systems and equipment.~~

~~§ 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.~~

~~§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.~~

~~§ 3.4.8 Providing coordination of construction performed by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.~~

~~§ 3.4.9 Providing services in connection with the work of separate consultants retained by the Owner.~~

~~§ 3.4.10 Providing estimates of Construction Cost.~~

~~§ 3.4.11 Providing detailed quantity surveys or inventories of material and equipment.~~

~~§ 3.4.12 Providing analyses of owning and operating costs.~~

~~§ 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.~~

~~§ 3.4.14 Providing services for planning tenant or rental spaces.~~

~~§ 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.~~

~~§ 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked up prints, drawings and other data furnished by Contractors.~~

~~§ 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.~~

~~§ 3.4.18 Providing services after issuance to the Owner of the final Project Certificate for Payment, or in the absence of a final Project Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.~~

~~§ 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.~~

~~§ 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.~~

ARTICLE 4 OWNER'S RESPONSIBILITIES

~~§ 4.1 The Owner shall provide full information regarding requirements for the Project, including a Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information to the extent necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~

~~§ 4.2 The Owner shall establish and update an overall budget for the Project based on consultation with the Construction Manager and the Architect, which shall include the Construction Cost, the Owner's other costs and If necessary, the Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Construction Cost as defined in Section 5.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Construction Cost, the Owner shall notify the Architect. If necessary, the Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.~~

~~§ 4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement. The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.~~

~~§ 4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents~~

~~submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services; retain a construction manager to administer the Project. The Construction Manager's services, duties and responsibilities will be as described in the edition of AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager. The Terms and Conditions of the Agreement between Owner and Construction Manager shall be furnished to the Architect and shall not be modified, to the extent that modifications affect the rights and responsibilities of the Architect, without written consent of the Architect, which consent shall not be unreasonably withheld. The Architect shall not be responsible for those negligent acts or omissions of the Construction Manager of which the Architect did not have knowledge.~~

~~§ 4.5 The Owner shall retain a construction manager to administer the Project. The Construction Manager's services, duties and responsibilities will be as described in the edition of AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager, current as of the date of this Agreement. The Terms and Conditions of the Agreement between Owner and Construction Manager shall be furnished to the Architect and shall not be modified without written consent of the Architect, which consent shall not be unreasonably withheld. The Architect shall not be responsible for actions taken by the Construction Manager; furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

~~§ 4.6 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. the services of geotechnical engineers when such services are reasonably requested by the Architect, which request shall include a written explanation of the need for the same. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, and ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.~~

~~§ 4.6.1 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish a scope of services for the services of the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.~~

~~§ 4.7 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, and ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations. tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~

~~§ 4.7.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.~~

~~§ 4.8 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents. may, at its sole discretion, furnish all legal, accounting, and insurance counseling services as may be necessary at any time for the Project, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

§ 4.9 The Owner shall furnish all legal, accounting, and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Application for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner. Any services, information, surveys and reports required by Sections 4.6 through 4.9 shall be furnished at the Owner's expense, and, unless notified otherwise by the Owner in writing, the Architect shall be entitled to rely upon the accuracy and completeness thereof. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information, surveys or reports.

§ 4.10 The services, information, surveys and reports required by Sections 4.6 through 4.9 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof. Prompt written notice shall be given by the Owner to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents provided, however, that the Owner shall have no obligation to investigate for the purpose of becoming aware of faults, defects, errors, omissions or inconsistencies.

§ 4.11 Prompt written notice shall be given by the Owner to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. If the Owner requests the Architect to execute, or obtain execution from Architect's subcontractors or consultants, certificates and consents required to facilitate assignment to a lender, the proposed language of such certificates shall be submitted to the Architect for review a reasonable amount of time prior to the requested dates of execution. Should the Owner request the Architect to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement, such certifications may be limited to the best of the Architect's knowledge.

§ 4.12 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement. Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 4.13 The Owner shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and Work of the Contractors. Notwithstanding anything to the contrary in this Agreement, the Owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing the Architect with information as to the Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents and shall in no way create any liability on the part of the Owner for errors, inconsistencies or omissions in any approved documents, nor shall any such review and approval alter the Architect's responsibilities hereunder or with respect to such documents.

§ 4.14 The Owner shall furnish the Architect copies of written communications with the Construction Manager and Contractors.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and Owner; of equipment designed, specified, selected or specially provided for by the Architect, plus Architect; a reasonable allowance for the Contractors' overhead and profit. In addition, a reasonable allowance for contingencies shall be included and profit; and a contingency in an amount approved by the Owner for market conditions at the time of bidding and for changes in the Work during construction. Except as provided in Section 5.1.3, Construction Cost shall also include the compensation of the Construction Manager and Construction Manager's consultants, consultants approved by the Owner in writing. For the purposes of calculating the Architect's compensation only, the Construction Cost shall not be raised on account of increased prices for construction materials.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Sections 4.1 through 4.4 and 4.6 through 4.14.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 The Architect's review of the Owner's Project budget and of preliminary estimates of Construction Cost or detailed estimates of Construction Cost prepared by the Construction Manager is solely for the Architect's guidance in the Architect's preparation of the Construction Documents. Accordingly, the Architect cannot and does not warrant the accuracy of the estimates of the Construction Manager, or warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation reviewed by the Architect. Architect; provided, however, that the Architect shall be responsible for any overrun of the Construction Cost caused by the act or omission of the Architect, its consultants, or subcontractors, or caused by factors of which the Architect was aware but failed to consider in providing estimates to the Construction Manager.

§ 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement.

§ 5.2.3 ~~In the event that the Construction Manager's estimate or the lowest bona fide bid or negotiated proposal received by the Owner exceeds the Owner's budget for reasons other than those described in Section 3.3, the modification of Contract Documents shall be the limit of the Architect's responsibility. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~

If at any time during any phase of the Architect's Services the estimate of the Construction Cost deviates from the estimate of the Construction Cost most recently approved by the Owner, the Owner may terminate this Agreement, such termination being a termination for cause. If the Owner does not so terminate the Agreement upon such deviation, the Architect shall, upon the Owner's request, cooperate with the Construction Manager to provide the Owner a written explanation of the deviation and propose design changes that would bring the Project within the most recently approved estimate of the Construction Cost.

§ 5.2.4 If the Owner's budget for the Construction Cost at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Construction Cost;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 8.3;
- .4 in consultation with the Architect and the Construction Manager, revise the Project program, scope, or quality as required to reduce the Construction Cost; or
- .5 implement any other collectively acceptable alternative.

§ 5.2.5 If the Owner chooses to proceed under Section 5.2.4.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Construction Cost at the conclusion of the Construction Documents Phase Services, or the budget if adjusted under Section 5.2.4.1. If the Owner chooses to proceed under Section 5.2.4.2, the Architect shall provide rebid services without additional compensation. The scope of such rebid services shall be the same as the scope of the services provided under Section 2.7.

ARTICLE 6 USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Architect's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect. All plans, drawings, specifications, models, reports and other materials and work product prepared or furnished by the Architect or on its behalf, including such materials and work product as are produced by the Architect's subcontractors and consultants, pursuant to this Agreement (collectively, the "Instruments of Service") are and shall be the property of the Owner and the Department, free and

clear of any claim or retention of rights thereto by the Architect and the Architect's subcontractors and consultants. The Instruments of Service cannot be used by the Architect or the Architect's subcontractors or consultants for any purpose beyond the scope of this Agreement without the prior written consent of the Owner. In addition to the immediately preceding sentence, the Architect agrees to obtain, and convey and assign to the Owner absolutely and exclusively, all intellectual property rights including, but not limited to, copyrights, in and to the Instruments of Service, and the Architect hereby does so grant, convey and assign to the Owner absolutely and exclusively such of those such rights that it owns.

§ 6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights. All Instruments of Service may be used by the Owner, in whole or in part, or in modified form, for, among other things, the completion of development of the Project and for future renovation, maintenance, repair or replacement.

§ 6.3 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

§ 6.4 The Architect will defend, at its own expense, any action brought against the Owner that is based upon a claim that the Instruments of Service or the Owner's use thereof infringes any United States patent, any copyright or uses a trade secret of a third party (hereinafter "Infringement"). The Architect further agrees to pay all sums which may be assessed against the Owner which relate to such Infringement, provided that the Architect shall be given (i) written notice of all claims of any such Infringement and of any suits brought or threatened against the Owner; (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any action, lawsuit, or claim without derogating, in any way, the Owner's rights granted hereunder; and (iii) all available information and reasonable assistance to do so.

§ 6.5 If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

ARTICLE 7 CLAIMS AND DISPUTES

ARTICLE 7 – ARBITRATION

§ 7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.**GENERAL**

§ 7.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period set forth in Section 52-584a of the Connecticut General Statutes.

§ 7.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201CMa. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 7.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.**MEDIATION**

§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 7.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 7.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 7.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
☐ Litigation in a court of competent jurisdiction
☐ Other *(Specify)*

§ 7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

ARBITRATION

§ 7.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement provided that any arbitration proceedings under this Agreement shall be brought in _____, Connecticut. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 7.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 7.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 7.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 7.3.4 CONSOLIDATION OR JOINDER

§ 7.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 7.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 7.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 8 TERMINATION, SUSPENSION OR ABANDONMENT

§ 8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The Architect may, upon thirty days notice to the Owner, terminate or suspend this Agreement upon the Owner's failure to perform in accordance with this Agreement, including the failure, without cause, to make a payment to the Architect required under this Agreement. The notice of termination or suspension must state with specificity the means by which the Owner may cure its nonperformance, and, the Architect may not terminate or suspend this Agreement if, within thirty days of the notice, the Owner substantially takes such curative measures.

§ 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, Owner suspends the Project for 90 consecutive days for reasons unrelated to a fault of the Architect, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services fully and satisfactorily performed by the Architect prior to notice of such suspension and, upon such suspension by the Owner or upon the Owner's suspension of the project for more than 120 cumulative days, the Architect may terminate this Agreement by giving not less than 30 days' written notice to the Owner and upon the Owner's failure to resume the Project within such 30 day period.

§ 8.3 This Agreement may be terminated by the Owner. The Owner may terminate this Agreement for cause as provided in this Agreement or upon the Architect's material failure to perform in accordance with the terms of this Agreement. Such termination by the Owner for cause shall be upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

§ 8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

§ 8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- 1** Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the pre-design, site analysis, or Schematic Design Phases; or
- 2** Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or
- 3** Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 Unless otherwise provided, this Agreement shall be governed by the law of the place where the Project is located, State of Connecticut.

§ 9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, current as of the date of this Agreement.

§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.

§ 9.4 The Owner and Architect waive all rights against each other and against the Construction Manager, Contractors, and the consultants, agents and employees of any of them for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their Construction Manager, Contractors, consultants, agents, and persons or entities awarded separate contracts administered under the Owner's own forces.

§ 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

§ 9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.7 Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 9.8 Unless otherwise ~~provided~~ required in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site, ~~including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.~~ site.

§ 9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Architect hereunder if the Architect is in default of any of its material obligations hereunder or otherwise is in default under any of the Contract Documents. The Owner may withhold such amount necessary to protect it from loss on account of such Architect default.

§ 9.10 The Architect hereby agrees, to the extent permitted by law, to defend, indemnify and hold harmless the Owner and its officials, employees and representatives against and from any claims, suits and/or legal actions of any type by third parties, including without limitation claims for loss of or damage to property, personal or bodily injury, including death, and claims for losses of any type, and from all judgments or decrees recovered therefore and from all expenses for defending such claims, suits or legal actions, including without limitation court costs and attorneys fees, which result or arise from the negligent acts or omissions, breaches, errors, torts or other improper unauthorized and/or unlawful acts or omissions of the Architect, its employees, agents, contractors or representatives, and/or design defects or breaches of warranty in, caused by, or related to the Project documents. The Architect shall properly correct or remedy any defects or problems caused by or related to any of the above, to the extent possible at no cost to the Owner.

§ 9.11 CONFIDENTIALITY

Any information obtained by the Architect from the Owner or Construction Manager may not be used, published, distributed, sold or divulged by the Architect, its consultants, agents, officers, or employees, for such party's own purposes or for the benefit of any person, firm, corporation or other entity other than the Owner, without the prior written consent of the Owner. Any information obtained by Architect, its consultants, agents, officers, or employees that is designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any other parties without the prior written consent of the Owner.

ARTICLE 10 COMPENSATION

ARTICLE 10 PAYMENTS TO THE ARCHITECT

§ 10.1 DIRECT PERSONNEL EXPENSE For the Architect's Basic Services described under Article 2, the Owner shall compensate the Architect as follows:

.1 For Pre-Approval Basic Services

.2 For other Basic Services

(Insert amount of, or basis for, compensation.)

§ 10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 10.2 REIMBURSABLE EXPENSES For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

~~§ 10.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.~~

~~§ 10.2.1.2 Expense of reproductions, postage, express deliveries, electronic facsimile transmissions and handling of Drawings, Specifications and other documents.~~

~~§ 10.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.~~

~~§ 10.2.1.4 Expense of renderings, models and mock ups requested by the Owner.~~

~~§ 10.2.1.5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.~~

~~§ 10.2.1.6 Expense of computer aided design and drafting equipment time when used in connection with the Project.~~

~~§ 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES~~For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation.)

~~§ 10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.~~

~~§ 10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2.~~

~~§ 10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.~~

~~§ 10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.2.2, based on (1) the lowest bona fide bids or negotiated proposals, or (2) if no such bids or proposals are received, the most recent estimate of Construction Cost prepared by the Construction Manager for such portions of the Project.~~

§ 10.4

~~PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES~~Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus (), or as otherwise stated below:

~~§ 10.5~~Where compensation for Basic Services is based on a stipulated sum or percentage of the Construction Cost, the compensation for each phase of services shall be as follows:

<u>Schematic</u>	<input type="text"/>	<u>percent</u>	<input type="text"/>	<u>%</u>
<u>Design Phase</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Design</u>	<input type="text"/>	<u>percent</u>	<input type="text"/>	<u>%</u>
<u>Development</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Phase</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Construction</u>	<input type="text"/>	<u>percent</u>	<input type="text"/>	<u>%</u>
<u>Documents</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Phase</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Bidding or</u>	<input type="text"/>	<u>percent</u>	<input type="text"/>	<u>%</u>
<u>Negotiation</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Phase</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<u>Construction</u>	<input type="text"/>	<u>percent</u>	<input type="text"/>	<u>%</u>
<u>Phase</u>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>
<input type="text"/>	<input type="text"/>	<u>(</u>	<input type="text"/>	<u>)</u>

Total Basic Compensation	one hundred	percent	100	(%)
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§ 10.6 When compensation is based on a percentage of the Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid, or (2) if no such bid is received, the most recent estimate of the Construction Cost for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 10.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 10.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 10.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include the expenses listed in this Section 10.3.1, to the extent incurred by the Architect and the Architect's consultants directly related to the Project and to the extent such expenses were so incurred for reasons unrelated to the fault of the Architect, its consultants and subcontractors.

- .1** Transportation and authorized out-of-town travel and subsistence, subject to prior written approval of the Owner;
- .2** Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3** Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4** Printing, reproductions, plots, standard form documents;
- .5** Postage, handling and delivery;
- .6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8** Architect's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9** All taxes levied on professional services and on reimbursable expenses;
- .10** Site office expenses; and
- .11** Other similar Project-related expenditures, subject to the prior written approval of the Owner.

§ 10.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus () of the expenses incurred.

§ 10.9 PAYMENTS TO THE ARCHITECT

§ 10.9.1 An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement.

§ 10.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

§ 10.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 10.4 ARCHITECT'S ACCOUNTING RECORDS

§ 10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred. Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times or at any time such records are lawfully requested by a government authority.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

The Owner shall compensate the Architect as follows:

§ 10.5 PAYMENTS WITHHELD

§ 10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

§ 10.6 ARCHITECT'S ACCOUNTING RECORDS

§ 10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

§ 11.1 AN INITIAL PAYMENT of (\$) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

Special terms and conditions that modify this Agreement are as follows:

§ 11.2 BASIC COMPENSATION This Agreement is comprised of the following documents listed below:

- .1 AIA Document B141 CMa - 1992
- .2 AIA Document E201TM-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

§ 11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

Basis of compensation

Phase(s) to which applicable

§ 11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:
(Insert additional phases as appropriate.)

Schematic Design Phase:		percent (%)
Design Development Phase:		percent (%)
Construction Documents Phase:		percent (%)
Bidding or Negotiation Phase:		percent (%)
Construction Phase:		percent (%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Section 3.2, compensation shall be computed as follows:

§ 11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:
(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

§ 11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of () times the amounts billed to the Architect for such services.
(Identify specific types of consultants in Article 12, if required.)

§ 11.4 REIMBURSABLE EXPENSES

§ 11.4.1 FOR REIMBURSABLE EXPENSES, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of () times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

§ 11.5 ADDITIONAL PROVISIONS

§ 11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within () months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Sections 10.3.3 and 11.3.2.

§ 11.5.2 Payments are due and payable () days from the date of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 11.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

ARTICLE 12 — OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation, and insert modifications to the payment and compensation terms included in this Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)